

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

SHELBY GARIGEN,

*Defendant,*

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**NOTICE OF MOTION**

Case No. 19-CR-206-A

**MOTION BY:**

James C. DeMarco III, Esq.  
**Attorney for Defendant**

**DATE, TIME, PLACE:**

Before the Hon. Richard J. Arcara  
United States District Judge  
United States Courthouse  
2 Niagara Square  
Buffalo, New York 14202  
On a date and time convenient for the Court

**SUPPORTING PAPERS:**

Affirmation of James C. DeMarco III, Esq.  
dated February\_\_\_\_, 2020

**RELEIF REQUESTED**

Permission to travel to Myrtle Beach South  
Carolina, Permission to Travel to Hershey  
Pennsylvania and Attend daughter's play at  
Clarence High School

**DATED**

Buffalo, New York, February\_\_ , 2020

Respectfully submitted,

BENGART & DeMARCO, LLP  
JAMES C. DeMARCO III, ESQ.  
Attorney for Defendant  
Office and Post Office Address  
2655 Sheridan Drive  
Tonawanda, NY 14150  
(716) 838-1515

jdemarco@bengartdemarcolaw.com

TO: AARON MANGO, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
138 Delaware Avenue  
Buffalo, New York 14202

MICHAEL MACALUSO  
UNITES STATES PROBATION OFFICER

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**AFFIDAVIT**

v.

Case No. 19-CR-206-A

SHELBY GARIGEN,

*Defendant,*

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STATE OF NEW YORK     )  
COUNTY OF ERIE        ) SS:  
CITY OF BUFFALO        )

JAMES C. DEMARCO III, ESQ., being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice in the State of New York and in this Court and am a Partner in the law firm of Bengart & DeMarco LLP, located at 2655 Sheridan Drive, Tonawanda, New York 14150.

2. I represent the defendant, Shelby Garigen, who is charged with access with intent to view child pornography in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

3. Ms. Garigen is a U.S. citizen and resides at 5968 Corrinne Lane, Clarence Center, New York 14032

4. I am fully familiar with the facts and circumstances surrounding this case through my investigation of this matter as well as my review of all the pleadings previously filed, in addition to my conversations with the defendant and members of law enforcement.

5. This affidavit is made in support of defendant's motion for permission to travel to Myrtle Beach South Carolina, for approximately 2 1/2 days to attend her daughter's sporting event as well as traveling to Hershey Pennsylvania for approximately 1 day, to attend a sporting event for her daughter as well as attend her daughter's play at Clarence High School.

6 On or about June 20, 2019 Ms. Garigen was arraigned and was released on conditions set by the Court, and the current conditions of her pre-trial release were established regarding her ability to travel.

7. Upon information and belief, the defendant has been fully compliant with the terms of her release.

8. Ms. Garigen seeks the permission of the Court to allow her to travel to Hersey Pennsylvania March 6, 2020 returning to Buffalo on March 7, 2020 and Myrtle Beach South Carolina, on March 20, 2020 returning to Buffalo on March 23, 2020 and to attend her daughter's play at Clarence High School.

9 While in Myrtle Beach South Carolina, Defendant will be with her family and friends, only attending the convention center in Myrtle Beach, South Carolina. Defendant will return to Buffalo, New York, March 23, 2020. The reason that Ms. Garigen is requesting overnight and out of state permission is that her husband is unable to travel to Myrtle Beach South Carolina for the event.

This would leave the children without proper supervision. She will, and always has abide by all of the terms and condition of her release.

10. In addition to the request make above Ms. Garigen's request to attend her daughter's play at the Clarence High School on March 12, 2020. The time of the play is 7:00 -

8:30 p.m. She arrive right at 7:00 and will exit the school at 8:30 pm. She has been practicing with her daughter and her daughter is proud to be in the play. Ms. Garigen would not have any contact with any other child/ren and would only be there to observe her daughter. She has indicated her willingness to sit in the back on the venue to eliminate any incidental contact with others.

I have contacted Probation Officer Michael Macaluso who has indicated that has will not take a position on Ms. Garigen's request and leave the determination to the court. I have contacted Assistant U.S. Attorney Aaron Mango, and he has indicated that he opposes the relief requested herein.

11. Finally, Ms. Garigen seeks the permission of the Court to allow her to travel to Hershey Pennsylvania, on March 6, 2020 returning to Buffalo on March 7, 2020. Defendant will be with her husband, family and friends, only attending her daughter's event.

12. I, as well as Ms. Garigen have contacted United States Probation Officer Michael Macaluso in regard her request to travel to Myrtle Beach South Carolina and Hersey Pennsylvania. He indicated to me that it is not common for individuals to travel overnight with an ankle bracelet and as such cannot consent to same leaving the final determination to the court. I have contacted Assistant U.S. Attorney Aaron Mango, and he has indicated that he opposes the relief requested herein.

**WHEREFORE** it is respectfully requested that SHELBY GARIGEN be permitted to travel to Myrtle Beach South Carolina Travel, to Hershey Pennsylvania and to attend her daughter's play at the Clarence High School on March 12, 2020. The time of the play is 7:00 - 8:30 p.m.

**DATED:** Buffalo, New York  
February \_\_, 2020

Respectfully submitted,

/s/ James C. DeMarco III, Esq.  
JAMES C. DEMARCO III, ESQ.  
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